

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6949 of 1989

With

SPECIAL CIVIL APPLICATION No 6908 of 1989

With

SPECIAL CIVIL APPLICATION No 7123 of 1989

With

Civil Application Nos.3831/99, 3833/99, 3834/99,
3835/99, 3837/99, 3604/99, 3601/99, 3827/99

In

SPECIAL CIVIL APPLICATION No.6949 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VAGHORA NATHALAL MURJI

Versus

STATE OF GUJARAT

Appearance:

Special Civil Application No.6949/89

MR JJ YAGNIK for the petitioner

MR SK PATEL, AGP for Respondent Nos.1 & 3

None present for Respondent No.2

Special Civil Application No.6908/89

MR JJ YAGNIK for the petitioner

MR SK PATEL, AGP for Respondent Nos.1 & 3

None present for Respondent No.2

Special Civil Application No.7123/89

MR JJ YAGNIK for the petitioner

MR SK PATEL, AGP for Respondent No.1

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 08/10/99

C.A.V.JUDGMENT

1. Learned counsel for the petitioners submits that in all these three Special Civil Applications, identical points have arisen for consideration of this court and the same be taken up for hearing together. Learned counsel for the respondents has no objection to take up all these three matters together for hearing. Accordingly, all these three matters are taken up together for hearing and are being disposed of by this common judgment.

2. Heard learned counsel for the parties.

3. Facts and grounds of challenge of the action of the respondents are being taken from the Special Civil Application No.6949/89. In the year 1983-84 vide Annexure-A applications were invited for appointments on the posts of Talati-cum-Mantri by the District Panchayats, Vadodara, Valsad, Dang, Jamnagar and Rajkot. In response to the advertisement, the petitioners submitted their applications for the posts in question. All have been called for written test and interview. It is the case of the petitioners that, select list has been prepared in the year 1985 and they have been informed their merit numbers therein accordingly. The grievance of the petitioners is that the respondent District Panchayat, instead of giving them regular appointments on the posts of Talati-cum-Mantri, they have been given purely adhoc temporary appointments, that too, for fixed term under the order dated 23.5.1988, Annexure-D (Colly.). But, in the month of February, 1989, services of the petitioners were brought to an end. The petitioners made grievance that, not only their services were brought to an end, but under the advertisement No.22/29/89-90 fresh applications were invited for making appointments on the posts of Talati-cum-Mantri. Hence, this Special Civil Application.

4. It is not in dispute that this court has not protected the petitioners by grant of ad-interim relief. Learned counsel for the petitioners contended that the merit lists prepared in the years 1985-86, 1986-87 and 1987-88 were ordered to remain in force till 30.3.1990 under the Government order dated 27.7.1989. Copy of this order was shown during the course of hearing by the learned counsel for the petitioners. In his submission, all the merit lists were kept alive, instead of giving fresh advertisement, the petitioners could have been given appointments.

5. It has next been contended that, when the merit lists have been prepared, the respondents could have given regular appointments rather than to give only adhoc temporary appointments, that too, for fixed term.

6. Lastly, it is contended that the petitioners' names are there in the merit lists and so long as they are not given regular appointments, their adhoc appointments should have been continued and termination of services of the petitioners is wholly arbitrary and unjustified.

7. Shri P.V.Hathi, learned counsel for the District Panchayat in Special Civil Application No.6949/89 contended that this writ petition is wholly misconceived. Learned counsel for the District Panchayat contended that, applications under the advertisement in question were invited for 20 posts of Talati-cum-Mantri and against those 20 posts, candidates above the petitioners in the merit list have already been given appointments.

8. It has next been contended that, moment the select list is operated to the extent of advertised vacancies, rest of the same automatically stood exhausted or cancelled. The petitioners are there in the waiting list, but 20 posts have been filled in. They have no right whatsoever of claiming any appointment on the basis of the waiting list.

9. Then, it has contended that, as and when the respondent District Panchayat in need of the persons for scarcity work, it has acted fairly and reasonably to give appointments. So as names were in the waiting list and in furtherance of this object and purpose, petitioners were given temporary appointments for the fixed term and the same were continued till the scarcity work was available. As the petitioners were appointed only on adhoc and temporary basis, they have not acquired any right to the posts and their services were rightly

dispensed with.

10. Lastly, it is contended that the termination of the services of the petitioners is perfectly legal and justified and the panel (merit list) which stood exhausted cannot be given effect to and acted upon and more so after 14 years of preparation thereof. Mr.S.K.Patel, AGP learned counsel appearing for the State Government has adopted the arguments of Mr.Hathi.

11. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

12. It is no more res integra that the candidate does not acquire any indefeasible right of appointment merely on placement of his name in the panel or select list. It is also settled law that, even if vacancies are available, number of candidates were found fit, even then successful candidates do not acquire indefeasible right to be appointed and they can be denied appointments legitimately. Reference may have to the decision of the Apex Court in the case of Shankarandash Vs. Union of India, 1991(3) SCC 47. This decision has been followed from time to time by the Apex Court. Reference may have to some of the judgments, recent in point of time i.e. V.Charulata Vs. S.Sguhalu, JT.1995(3) SC 577, Union of India Vs. S.S.Uppal, JT 1996(1) SC 258, State of Bihar Vs. Md. Kalimuddin, JT 1996(1) SC 271.

13. Learned counsel for the petitioners does not dispute this position that, whatever posts for which applications were invited under the advertisement in this case, have been filled in as per the merit lists. He also does not dispute that, none of the candidates lower in the merits than the petitioners, given the appointments on the posts of Talati-cum-Mantri. In view of this factual admitted position, the petitioners have no legal and fundamental right of appointments to the posts of Talati-cum-Mantri. It is the case where none of the legal or fundamental rights of the petitioners are being infringed. Appointments from this merit lists should have been made only on merits against the number of vacancies which were advertised. The appointing authority is not competence nor it is legally permissible to it to make appointments from the select list extending number of posts which have been advertised. In the case in hand 20 posts were advertised to be filled in by the selection and 20 appointments have been made from the select list. Here, reference may have to the decision of the Apex Court in the case of Prem Singh & ors. Vs. Haryana State Electricity Board and others., 1996(4) SCC

319. In view of this settled position, the petitioners have no right to pray before this court for issuance of a writ of mandamus to the respondents to fill in the posts from the merit lists extending number of posts. No writ of mandamus in this case can be issued to the respondents as none of the legal or fundamental rights of the petitioners are infringed. Reference to the order of the Government dated 27.7.1989 is wholly irrelevant for the reasons that this is infact contrary to the decision of the Apex Court in the case of Prem Singh & Ors Vs. Haryana State Electricity Board and others (supra). Once the appointments from the select list have been made against all the notified posts, select list as well as waiting list stood exhausted. In view of this legal position as laid down by the Apex Court in the case of Prem Singh and others Vs. Haryana State Electricity Board and others (supra), no life or currency could have been given to the select list so as to keep it operative for filling up vacancies beyond the number of posts advertised. Otherwise also, on the facts of this case, I find that the backlog of reserved posts were there and lateron decision has been taken not to operate the select list and first to make good of backlog of reserved category of posts. For this, advertisement has been issued in the year 8.8.1989 to which no exception can be taken on the grounds aforesaid. Otherwise also legally the respondent District Panchayat in the facts of this case is correct not to act upon the select list.

14. The respondent District Panchayat has acted very fairly and reasonably in this case, giving adhoc/temporary appointments on the posts from the waiting list, as and when the work is increased due to scarcity work.

15. Taking into consideration the totality of the facts of these cases, I do not find any merits in any of the Special Civil Applications and the same are dismissed. Rule in all the Special Civil Applications is discharged. Interim relief, if any, granted in any of the Special Civil Applications stands vacated. However, in view of the facts of these cases, no order as to costs. As the Special Civil Applications are dismissed, these Civil Applications have become infructuous and accordingly the same are also dismissed.

(S.K.Keshote,J.)
(pathan)